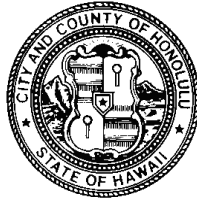


ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

715 SOUTH KING STREET, SUITE 211 • HONOLULU, HAWAII 96813-3091 • AREA CODE 808 • PHONE: 768-7786 • FAX: 768-7768 • Internet: [www.honolulu.gov/ethics](http://www.honolulu.gov/ethics)

KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR &  
LEGAL COUNSEL

MINUTES  
ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

Date and Place: September 30, 2013  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Charles W. Gall, Esq., Chairperson [**recused from V.D.**]  
Rachael S. Wong, Dr.PH, Vice Chairperson  
Michael A. Lilly, Esq., Commissioner  
Katy Chen, Esq., Commissioner [**IV.B., V.B. only**]  
Jeffrey Burroughs, Ph.D., Commissioner  
Stephen Silva, Commissioner  
Stanford Yuen, P.E., Commissioner [**all items except for IV.D.**]  
Charles W. Totto, Executive Director and Legal Counsel (EDLC)  
Laurie A. Wong, Associate Legal Counsel (ALC)  
Donna Y. L. Leong, Corporation Counsel (Corp Counsel)-COR [**IV.B., V.B. only**]  
Sheryl L. Nicholson, First Deputy-COR [**IV.B., V.B. only**]  
Catherine R. Maki, Administrative Services Officer-COR [**IV.B., V.B. only**]  
Letha A. S. DeCaires, EC Investigator  
Tierra L. Bickford, EC Po'okela Fellows Intern

Stenographer: Lisa P. Parker, Legal Clerk

I. CALL TO ORDER

The 472nd meeting of the Ethics Commission ("Commission" or "EC") was called to order at 11:40 a.m. by Chair Gall.

The Commission had before it the memorandum regarding the Agenda Items for the September 30, 2013 Meeting, Open Session and Executive Session, dated September 24, 2013.

Chair Gall asked the EDLC to introduce the guests in the Open Session.

The EDLC introduced Donna Leong, the Corporation Counsel, Department of the Corporation Counsel (COR) Sheryl Nicholson, First Deputy, COR, and Cathy Maki, the Administrative Services Officer (ASO), COR. The EDLC requested that the agenda items be taken out of order to accommodate the guests. Chair Gall agreed.

#### IV. NEW BUSINESS

B. For Decision: Request for a Motion for a Letter to be Sent from the Commission to the Administration Advocating for an Increase to the Commission's Fiscal Year 2015 Budget

Chair Gall confirmed that the EC would take Open Session item IV.B. on the agenda first, and asked Ms. Leong to address the Commission.

Ms. Leong introduced herself and thanked the Commission for the opportunity to address FY 2015 budget-related items IV.B and V.B. on the agenda. Ms. Leong described her professional background spanning from her graduation from University of Washington law school, to her first job as a Deputy Corporation Counsel over 30 years ago; private practice at Cades Schutte, and then Outrigger Enterprises. She indicated that she was on the recruiting committee at Cades Schutte, and hired an Associate General Counsel and interviewed other attorneys while at Outrigger Enterprises.

Ms. Leong returned "home" to COR in April 2013 and since then has hired eight deputies including the First Deputy, who started working at COR three weeks ago. Ms. Leong stated that the deputies have between 0 and 30 years of relevant legal experience. She overhauled the disparate salary structure to make it fair regardless of the economic condition when they were hired as some deputies had very low salaries since they were hired between 2008-2010 during the recession. Ms. Leong explained that she wanted to show the Commission that based on her background she has a lot of experience with hiring and setting salaries for both in-house counsel and private lawyers in a law firm.

Despite her professional background, she admitted that she's unfamiliar with COR's budget responsibility which is completely different than her prior budgeting experience in the private sector. As such, she's still learning about COR's budget responsibility.

Ms. Leong stated that the city is faced with budgetary challenges for fiscal year (FY) 2014 and even more so for 2015. She stated that this Administration needs to work together as a team in order to provide core city services within the budgetary constraints. She stated that she wanted to provide the budgetary context so the EC could make an informed decision on the two agenda items.

Ms. Leong explained that consistency, fairness, and equity are very important considerations to establish salaries in a law firm. When she made the salary adjustments to her 42 deputies, she looked at their relevant legal experience, which was an established COR

standard. For example, someone who does procurement in a private law firm, may get one-on-one credit for their years working in that area if they are the deputy assigned in that section. She further stated that it was important for her to treat deputies who operate at the same level equitably, based on her observations of their work product, how many employees they supervise, how many clients they serve, and client relationships and confidence. She stated that she treated her three division heads equitably.

Ms. Leong stated that salary is not based on “numbers” such as billable hours and how many assignments are completed. She admitted that generally the deputies don’t keep billable hours. As a member of the management committee and as a person who has reviewed many invoices for outside counsel, she stated that numbers can be deceiving and you have to use your judgment in looking at the quality of the work to determine whether the compensation that the lawyer is seeking is fair and a good value for the work product.

Ms. Leong explained that in hiring the eight new deputies, she gathered a lot of information about present market conditions and salary expectations. As a result, she’s very appreciative of the deputies who serve at COR, because their salaries quite frankly, “suck, they just suck.” That’s the nature of public service; you have a commitment to serve the public, and you know that you’re not doing it for money, so without question they’re not being compensated, truly, for the value of their work, and having been in the private sector for 20 years, seven years as General Counsel, she reiterated that their salaries are below desirable. She further stated that the deputies still work at COR, and all she can do is thank them for their commitment to public service.

She requested that the Commission use salary expectations, years of relevant experience, and market conditions to determine the salaries of the EC staff. She acknowledged that the EC establishes the Executive Director’s salary, and all staff positions are set by the position classifications plan per the Charter.

She acknowledged that the Managing Director (MD) submitted a letter to the EC that summarily describes the city’s FY 2015 budgetary challenges caused by collective bargaining arbitration decisions and cited a \$150 plus million deficit in 2015.

Ms. Leong then referred the EC to the letter sent that morning by Nelson Koyanagi, Director, Department of Budget and Fiscal Services (BFS) in which he asked the Commission to establish and document standard performance criteria to award merit-based pay increases or award pay increases based on excluded managerial employees as applied to the executive director’s position.

Ms. Leong explained that the agenda items seems to indicate that the EC accepted the EDLC’s and the ALC’s salaries for FY 2014. Ms. Leong admitted again that she was new to the city’s budget process. She asked the EC if they set the salaries for FY 2014.

Chair Gall and Commissioner Silva responded, in the negative. The EDLC clarified that the FY 2014 salary for himself and the ALC had already been set based on the FY 2013 budget process which occurred in the fall of 2012 and early 2013. The EDLC also stated that on Friday, staff received notification that they were supposed to receive 4 percent pay increases. Ms. Leong stated that it was her understanding that although the 4 percent increase was part of the COR budget, it should not be used to set the EDLC and ALC salary. The EDLC responded that he didn't request a salary increase, and his salary would have been set based on the EC budget.

Chair Gall didn't recall having any kind of motion or procedure where the EC would review and approve the EDLC's salary.

Ms. Leong stated that if the salaries had not been set for FY 2014, that the EC needs to set the EDLC's salary. She further stated that just because the 4 percent has been allocated to the EC, that the 4% pay increase was not automatic as some of her deputies did not receive the 4% increase and that the increase was based on merit. The EDLC responded that if there's going to be an increase to his salary, then it needs to be set by the EC.

Commission Lilly confirmed that the Commission approves the budget and that the budget allocates funds that reflect the staff salaries. The EDLC concurred. Commissioner Lilly continued, but the EC hasn't made the decision of what the salaries would be for 2014. The EDLC responded, "Not technically." Commissioner Lilly further commented that Ms. Leong's dilemma appears to be how do you do you set the budget for 2015, when you haven't set the EDLC salary for 2014.

Ms. Leong stated that the EC should use her approach to setting salaries by using the amount set for FY 2014 for the 2015 budget. Her reasoning was that the EC needed to use FY 2014 salaries for the FY 2015 budget because the EC can't authorize the salary for FY 2015, which starts July 1, 2014, until they've evaluated the EDLC with the performance metrics or they award an Excluded Manager (EM) increase, which is the 4 percent increase that the BFS director proposed in his letter.

She further stated that procedurally she looked at the agenda item for V.B., which is also related to IV.B, and stated that the action requested on the agenda item cannot be authorized and approved by the Commission since the performance hasn't happened yet.

Chair Gall asked Ms. Leong if the options set forth in BFS letter are the only options the Commission has in order to set the salaries for the EDLC and ALC. Ms. Leong responded that she had to set her deputies salaries as of July 1, 2013 for fiscal year 2014. When she set the budget for FY 2015, she basically used the salary increase as a budgeted item, which wasn't to say that they were going to get that salary.

Commissioner Chen asked Ms. Leong for confirmation that she checked her July 2013 numbers and budgeted that already for July 2014? Ms. Leong corrected Commissioner Chen,

and stated 2015. Ms. Leong further explained that in July 2013, she had to set the salaries for the deputies for fiscal year 2014, and that fiscal year 2014 is from July 1, 2013 to June 30, 2014. Commissioner Chen acknowledged the explanation, and asked Ms. Leong to confirm that she set the budget for the following fiscal year 2015, based on the fiscal year 2014 numbers, so that means the budget for FYs 2014 and 2015 are the same. Ms. Leong confirmed. Ms. Leong stated that she hadn't determined the COR deputies' salaries as of July 1, 2014, therefore, she just budgeted salaries based on no increase. Commissioner Chen asked for confirmation that Ms. Leong based the FY 2015 salaries on no increase. Ms. Leong confirmed.

Commissioner Chen asked Ms. Leong if she wanted to make salary decisions based on merit, wouldn't the deputies have to work a full year, for her to make the decision on their salary starting on July 1, 2014? Ms. Leong agreed. Commissioner Chen asked Ms. Leong when will she make that salary decision. Ms. Leong responded that this year she made the decision late because she was new and didn't understand the budget process. She stated that next year she would probably try to start the process at the end of May or beginning of June.

Commissioner Chen asked Ms. Leong that since she budgeted for the salaries to be the same, and if salary increases are merit-based, could the salaries increase in theory? Ms. Leong responded that it could. Commissioner Chen asked if the budget could allow for that. Ms. Leong explained that the MD said that everybody "tows the line" on budget, or some people actually take a cut. Ms. Leong explained that COR took a cut in 2014 because COR had vacant positions, City Council cut half of COR's provisional account. City Council said COR would have to go through several steps to get the money back. Unfortunately, COR had not hired any new deputies since October 2012, so that's why there were eight vacant positions. Ms. Leong stated that she had a big deficit that she had to fill with other funds from the COR budget.

Commissioner Chen asked Ms. Leong that when she conducted her merit-based analysis this past summer, if any salaries decreased. Ms. Leong said, "No." Commissioner Chen repeated for confirmation that nobody's salary decreased, even though Ms. Leong considered merit, the economics, equity; all those things she just discussed. Ms. Leong confirmed that no salaries were decreased. She added that some deputies may not get an increase, some may receive a 2 percent increase, and some a 4 percent increase. She stated that there was a salary adjustment because the salaries were "out of whack."

Ms. Leong asked how the EC would set the budget for FY 2015 when they had not determined the EDLC's salary for FY 2014?

The EDLC explained that one of the problems is that Ms. Leong is talking about a budget-setting process that he's never been informed of. He further stated that Ms. Maki, COR's ASO can recall many times all the COR deputies received a 4 percent increase that was allotted to them from a provisional account, but, the EC attorneys were excluded from the allotment. The EDLC was told that if the EC wants to ensure that any budget matter such as inclusion of the provisional account allotment for the upcoming fiscal year was included in the budget, the EC

had to ensure that it was included in the budget-setting process. The budget setting process for a fiscal year occurs essentially 9 months ahead of time, and that is why this matter is on the agenda today.

The EDLC followed, that for FY 2014, as in all prior years, there's a salary item for the EDLC and the ALC, estimating what our salaries would be in the next fiscal year. Certainly the EC could have decreased it. The EDLC doesn't know if it could be increased during the fiscal year because there wouldn't have been any funds.

The EDLC only heard on Friday that this time the provisional account is actually going to include the ALC and the EDLC. He understands COR and BFS, and appreciates their letter although he believes performance metrics have been used in the past evaluations.

The EDLC stated that he has no problem entertaining a motion to set the EDLC and ALC salaries for FY14. He doesn't want the Commission thinking that he's trying to do an "end-run" on city government by prematurely setting a budget for FY 2015. But the EC has repeatedly been excluded from any increases to budget or salary items in the past when others received increases. The EDLC stated that although the ALC's position might get an automatic increase because she's on the SR classification plan, but the EDLC's would not.

Ms. Leong responded that the Charter requires that the EC set the salaries, and she doesn't believe automatic increases are appropriate, just because the money is budgeted. The EDLC responded that he's not suggesting that.

Ms. Leong stated that the EC had a procedural dilemma that was difficult to address because of the way the agenda split the items between open and executive session. She informed the EDLC that she wasn't being confrontational, but wanted clarification on whether he thought he should automatically get the 4 percent raise for FY 2014. The EDLC disagreed and explained that his pay is always set at the level determined by the EC that is why he assumed fiscal year 2014 salaries would be according to what was in the budget. The EDLC explained that the ALC's salary is a different situation because she is in the classification plan, and he believes that her salary would follow the SR26, award to the Unit 13 Employees after arbitration. He understands that currently, Unit 13 rejected a 4 percent increase this year and a 4 percent increase next year. The EDLC explained that when Ms. Maki called and said there were funds in the provisional account, he told the ALC that although she may be able to get an increase from the provisional account, she's not going to get another raise based on Unit 13 award. She would be limited to the larger of two sums. The EDLC asked Ms. Leong whether he answered her question, and she responded that she didn't know.

Chair Gall asked when the EC would have to provide the budget for FY 2015, and the EDLC responded that it had already been submitted in September. Ms. Leong agreed and further stated that the budget is being reviewed by BFS and the Managing Director. Chair Gall asked for clarification - was Ms. Leong was saying that one of the problems that arose during the vetting

process was that there was never a 2014 salary that was formally established and approved, and therefore there's an issue with our budget numbers. Ms. Leong agreed.

Ms. Leong continued stating that had she known of the budget situation, she would have asked the Commission to formally set the salaries so that she would have a better basis for the FY 2015 budget request. She further stated that she thinks there might be time by the next commission meeting, to put this on the agenda, setting or authorizing the salary for 2014, and then approving the budget for 2015, based on that. Ms. Leong stated that she was grateful to the MD for providing the context of the budget on the macro level as well as the BFS Director for providing the guidance and a more rational basis to set the EDLC's salary based on merit, performance criteria, or to do a step increase. Ms. Leong stated that she will be happy to review and provide input on the EDLC's salary because she set the salaries of 42 deputies.

Chair Gall asked Ms. Leong if she had a matrix or some type of chart or other tabulation of how she set the deputies' salaries. She responded that she did not, but explained that it's based on years of relevant legal experience. Chair Gall responded that he understood the mechanism. Ms. Leong repeated that she fairly and equitably equalized the salaries, and if the deputies have an issue when the Civil Beat article comes out disclosing everyone's salary, she'd be happy to talk to them about it. Ms. Leong repeated that salary was based on years of relevant legal experience, merit, and work product. Chair Gall asked if Ms. Leong had any standards that would indicate a certain salary range for an attorney with 10 years or 20 years of relevant legal experience, and what is the salary range at the division level? Ms. Leong responded in the negative. The EDLC referred the EC to the meeting materials that includes Ms. Leong's email from a month and a half ago which identifies her criteria and its application to the ALC and EDLC's salaries. Ms. Leong requested that the EC go into executive session to address agenda item V.B.

**12:10 p.m. - Chair Gall asked for a motion to go into executive session. Vice Chair Wong so moved, Commissioner Silva seconded and all were in favor. Chair Gall announced the commencement of executive session.**

## **V. EXECUTIVE SESSION SUMMARY**

- B. For Action: Request for a Motion to Authorize a Salary Increase for the Executive Director and Legal Counsel and to Support the Salary Increase for the Associate Legal Counsel for Fiscal Year 2015.

**After discussion, Commissioner Lilly moved that the matter be set on the agenda for the next meeting. Commissioner Silva seconded and all were in favor. The Chair asked that the 2014 salaries be put on the agenda for the next meeting as well.**

**[12:46 p.m. – Commissioner Chen exited the meeting; at 12:50 p.m. Corp Counsel and her staff exited the meeting; and at 12:51 p.m. the meeting commenced again.]**

- D. For Action: Request for a Motion to Approve Staff's Draft Advisory Opinion Regarding Whether the Use of Private Funds is a Gift for the Benefit of a City Officer.

**The EC decided to take this matter out of order. Chair Gall recused himself on this matter.**

**After discussion, Vice Chair Wong asked for a motion to accept the draft advisory opinion with corrections. Commissioner Lilly so moved, Commissioner Silva seconded, and all were in favor.**

**Vice Chair Wong asked for a motion to offer the ten-day embargo on the advisory opinion. Commissioner Yuen so moved, Commissioner Lilly seconded, and all were in favor.**

**[1:03 p.m – Chair Gall re-entered the meeting.]**

- A. For Action: Request for a Motion to Approve the Minutes of the Executive Sessions of the July 15 and August 19, 2013 Meetings.

**Chair Gall asked for approval of only the July 15, 2013 Minutes and if there was any discussion. Commissioner Lilly so moved, Commissioner Silva seconded, and all were in favor.**

- C. For Information: Investigation of Alleged Preferential Treatment by Certain City Officers and Employees for the Benefit of a Company.

**After discussion, Commissioner Lilly moved to exit and conclude the executive session. Commissioner Burroughs seconded, and all were in favor.**

**II. FOR ACTION: REQUEST FOR A MOTION TO APPROVE THE MINUTES OF THE OPEN SESSIONS OF THE JULY 15 AND AUGUST 19, 2013 MEETINGS**

**Chair Gall asked for a motion to approve the July 15, 2013 Minutes. Commissioner Yuen so moved, Commissioner Silva seconded and all were in favor.**

**III. OLD BUSINESS**

- A. Confirming the Date and Time of the November 6, 2013 Meeting

**After discussion, the EC decided to move the November 6, 2013 meeting to November 4, 2013 at 11:30 am.**



B. Setting the Date and Time for the Meeting During the Week of December 2 - 6, 2013

The meeting was tentatively confirmed for Wednesday, December 4, 2013 at 11:30 a.m.

IV. NEW BUSINESS

A. For Discussion: Administrative News

The EC referred to the EDLC's Open Session memorandum that provided information on items IV.A.1 through 3 (advice, website, education, training statistics).

4. Council on Governmental Ethics Laws (COGEL) Conference:

The EDLC reminded the EC of the COGEL Conference which would be held in Quebec, Canada from December 8 through 11, 2013. Chair Gall asked about the cost of the conference and if it would make sense to attend. The EDLC responded that it's probably \$2,000 per person and normally there is no money allotted for conferences, but in the past we've been able to write a memorandum to the MD for approval to spend \$2,000 to \$4,000 to attend the COGEL conference. Vice Chair Wong asked the EDLC to check and confirm the allotment, and the EDLC responded that the city is looking at deep deficits for the coming year, and cannot promise an allotment, but will check with the MD. The EDLC further informed the Commission that it's most important for the Commissioners to attend since both he and the ALC have attended the conference in the past. The EDLC asked which Commissioners were interested. After hearing no response, the EDLC recalled that Chair Gall might have mentioned that he wanted to attend, however, it's subject to the MD's approval.

Vice Chair Wong stated that she would not attend since her commission expires at the end of this year. The EDLC further mentioned that he is trying to find out the status on her reappointment but has not heard anything in response.

The EDLC informed the Commission that if there are at least two Commissioners that want to attend the COGEL conference, he'll begin the process for them to attend. Chair Gall stated that they should verify the cost and later see whether it can be justified, considering the budget constraints. Vice Chair informed the EDLC that in the July minutes, Commissioner Chen indicated that she wanted to attend the conference.

**[Item IV.B. was addressed again as follows:]**

IV. NEW BUSINESS

B. For Decision: Request for a Motion for a Letter to be Sent from the Commission to the Administration Advocating for an Increase to the Commission's Fiscal Year 2015 Budget

The EDLC informed the Commission that this item will be addressed at the November 4, 2013 meeting. EDLC will confirm more items with COR. EDLC asked the Commission whether there were any particular issues on the non-salary budget items or any particular questions for the COR. The EDLC directed the Commission to page 3 of the open session memo.

Vice Chair Wong asked the EDLC if COR still supports the costs of the legal clerk, the extra \$15,000 for outside professional services and office extension. The EDLC replied that he believed they did, but it was subject to COR's approval and so far, COR only addressed the salaries. The EDLC explained that he didn't feel comfortable representing that COR agreed to everything but will double-check, and the Chair agreed.

The EDLC further stated that he'll still try to advocate for a new position as opposed to reallocating the ALC position, because it would be better to keep the unfunded position to obtain funding at a later date.

C. For Discussion: Ways to Help Respondents Better Understand the Ethics Commission Process in a Settled Case

The EDLC prefaced the discussion by stating that this item was placed in the open session because EC staff had already talked to Councilmember Ann Kobayashi about each of these issues, and all the records were public.

The EDLC recommended that to avoid future alleged due process issues, the EC should have respondents attend the hearing, where the Commission is going to approve the settlement agreement.

Chair Gall agreed and stated that their attendance would allow the Commission an opportunity to ask any questions of the Respondent or if the Respondent wanted to address the Commission. Commissioner Burroughs asked if attendance would be required. Chair Gall responded that the EC should require it. The EDLC asked if the Commission would want to require attendance for everyone or just those who aren't represented by attorneys. Chair Gall stated that attendance should be required for everybody. Chair Gall further stated that he felt that attendance at the hearing on approval of the settlement agreement should be part of the settlement process. He stated that the respondent would have the opportunity to address the Commission, and the Commission would ensure that the respondent understood the terms of the settlement and that the Commission's opinion will be made public. Chair Gall further stated that mandatory attendance would avoid Respondent's alleging that they weren't given an opportunity to be heard or that they were not treated fairly.

Vice Chair Wong suggested that the EC may want to allow respondents to waive their opportunity to attend the hearing to approve the settlement agreement because some people may not want to attend. Chair Gall disagreed and explained that attendance at the hearing should be mandatory as part of the settlement process, because if the Respondent waives their opportunity

to attend the hearing, that leaves the Commission open for criticism that they failed to give respondent due process.

Ms. DeCaires, EC Investigator II, asked Chair Gall if the Respondent refused to attend the meeting would it stop the Commission from approving the settlement agreement. Chair Gall responded that attendance should be a condition of the settlement. The Chair further stated that if there's no settlement than they would proceed as an adversarial proceeding.

Vice Chair Wong stated that she could see someone prolonging the case by failing to attend the hearing. Vice Chair Wong further stated that the requirement for attendance should have time parameters. Chair Gall explained that if the Respondent doesn't appear then there's no settlement and they just move the case forward as a contested case.

The EDLC suggested that if the Respondent fails to appear, the Commission will draft an advisory opinion based on the information available to it. This is an option that is available under the ordinance if a respondent does not respond to a notice of alleged violation. The EDLC stated that he thinks the Commission would be well-covered in that situation. Of course staff would have to give respondent notice by certified mail.

Chair Gall stated that from the very beginning EC staff must make it clear that attendance at the hearing to approve the settlement agreement is a condition to the settlement. If the respondent decides not to comply, the Commission will basically take a default against them. Commissioner Silva commented that the Respondent should still be required to pay the fine even if they default on showing up at the hearing. The Chair agreed and responded that enforcement of the civil fine is a separate issue.

**Chair Gall moved for a motion to adopt the aforementioned discussion, Commissioner Yuen seconded and all were in favor.**

The EDLC informed the Commission that a motion on the item was unnecessary. From hereon the EC staff will include language in the settlement agreement that if there is a material modification by the Commission when they review the settlement agreement, the parties (staff and respondent) are not bound by the settlement. Chair Gall responded that the Settlement Agreement is only effective when approved by the Commission, and the EDLC confirmed.

Chair Gall further commented that there should be reports about the case prior to the Settlement Agreement going into final form. The EDLC's only concern about providing reports was that the Commission may prematurely determine that amount of the civil fine is improper without knowing the facts of the case. The EDLC further informed the Commission that he will certainly let them know when the parties come to a general agreement. Chair Gall confirmed that the EDLC will let the Commission know if he has an agreement in principle on key terms, and it will raise a red flag for anyone in the Commission in case it might be problematic.

The EDLC asked if there was anything else on Item C, Chair Gall responded in the negative.

**[1:30 p.m. – Commissioner Yuen exited the meeting and the EDLC asked the Commission if they still had quorum, since Commissioner Yuen left. Commissioner Silva responded that they still had quorum.]**

**D. For Information: Complaint Cases that have been Transferred to the Departments for Corrective Action**

The EDLC stated that the EC will be reviewing more serious cases due to the implementation of the mandatory ethics training for all employees and due to Ms. DeCaires, Investigator II joining the EC staff. As such, EC staff will be trying to move the less serious cases to the departments again for further action.

With Ms. DeCaires on staff, the departments now have a preliminary investigative report that she provides that they can rely on. The EDLC continued that when he and the ALC investigate cases, they see related problems including work place violence, moral issues, or minor ethics violations. The EDLC stated that staff has come across systemic problems in the departments which are aggravated by mismanagement and complacency with the status quo.

The EDLC asked Ms. DeCaires to comment on her experiences based on her 27 years with HPD and over the last five weeks with the EC.

Ms. DeCaires voiced concern that she has encountered ongoing systemic problems that the EC had previously identified and addressed, but the departments fail to make any changes. As a result the same types of cases are recurring.

She reiterated the EDLC's concerns with mismanagement due to incompetency, lack of basic supervisory training, lack of policies, or unenforced policies. Mismanagement sometimes appears as preferential treatment. She explained that the EDLC gave her 30 cases when she started and she has closed 8 cases so far. She has spoken to at least 20 different people during her investigations. She also conducted surveillance and observed employees who were not working when they were scheduled to work overtime. She stated that this type of misuse of city resources is happening in practically every department.

Ms. DeCaires stated that she has began informing department directors that she is not singling out their department, it is just that she sends a lot of emails and memos. Each case she investigates opens another Pandora's Box of problems. She stated that as a result of one of her investigations, she was able to make a positive policy change in a department within three days.

Ms. DeCaires voiced her concern that investigations must occur quickly because the case load will continue to increase even more quickly. The EDLC commented that if the case load continues at the current pace, our case load will increase 25 percent over last year.

Ms. DeCaires stated that the stronger the EC, the stronger the city and the community. There are a lot of complainants and witnesses who become very emotional since they are very

tired of the continuing problems that occur throughout the years.

Chair Gall asked Ms. DeCaires if the problems were management issues or ethical problems, and Ms. DeCaires confirmed they were both. She dealt with ethical, supervisory, morale and work-place violence problems. She stated that some individuals will stand-the-line against unethical behavior, but then they succumb and suffer with peer pressure. The peer pressure and stress literally limits their ability to be healthy. These employees end up calling-in sick sometimes because of stress. In one particular case, the person died as a result of all the stress.

**[1:48 p.m. – Legal Clerk exited the meeting to prepare materials for an upcoming hearing.]**

Ms. DeCaires stated on a positive note, that she has received many positive comments from people when they see something that's being done. Chair Gall asked her for some specifics. The EDLC reminded Ms. DeCaires not to use any names in her descriptions.

Ms. DeCaires described a case where high level supervisors sent out political emails to their subordinates who did not share the same beliefs. The subordinates wanted the supervisors to be held accountable for the misuse of city resources because the supervisors had held them accountable for the same thing. She also described a case where employees from two different departments fought over office supplies because the supplies provided box tops (money) for their child's school. Commissioner Silva commented that they wanted the glory.

Ms. DeCaires described another case in which she conducted surveillance on a particular unit, and expected to find one person misusing city resources, but instead witnessed four employees misusing city resources in one day. Commissioner Lilly asked what they were doing. Ms. DeCaires responded that 4 employees were stealing overtime (misuse of city resources) from the city. In addition, one of the individuals had 19 arrests, and three convictions for violent offenses and drugs. When he came in for an interview, he was volatile with her, and accused her of lying. She has already this case back to the department.

Ms. DeCaires informed the Commission that when cases are sent back to their department for action, she gives them 30 days to inform her of the status. If the departments aren't doing anything, the EDLC and ALC will be informed to follow up, so that people will be held accountable.

The EDLC commented that the EC doesn't have the resources to take on all these cases. Commissioner Lilly responded that staff already investigated the alleged violation and obtained the evidence, and the EDLC confirmed. Commissioner Silva asked if the case can be turned over to the Prosecutor's Office. The EDLC responded that only some cases could be turned over if appropriate. The EDLC explained that he believed that giving the cases to the department would be better because they know the EC is holding them accountable. If EC staff increased we could take on more of these types of cases.

Commissioner Lilly asked if the departments are receptive to these cases. Ms. DeCaires responded that in one case the director wrote back an amazing positive response which was included in the EC's meeting materials. Ms. DeCaires further stated that most of the people she's dealing with are supervisors and that she will update the Commission in a couple of months on the status. The EDLC added that they encountered great reactions from some directors and dodging from other directors and everything in between. Chair Gall asked which department had the overtime abuse, and the EDLC responded "Parks."

The EDLC thanked the Commission for their support, and that it takes all of the different roles as commissioners and staff in order to have a good ethics program. He pointed out that one of the really tough issues is dealing with high level managers who won't deal with ethic issues, because they feel that it is an unnecessary distraction from their substantive work. He stated that it's going to be hard to work with them to convince them that the more you deal with ethics issues, the fewer distractions you'll have in the long-run.

Finally, the EDLC informed the Commission that the resolution of an ethics violation at the administrative level may deter that person from committing a criminal violation.

In addressing the protocol of using email for written communication to city officers, the EDLC informed the Commission that usually staff responds to requests for advice the same way the request comes in. Staff relies on emails to conduct discovery and get information from witnesses and requests for advice. So far, there has only been one respondent that wanted to use the fax machine instead of email to transmit written communications. Chair Gall mentioned if they should adopt email as being a written communication in the context of the EDLC's advisory opinion to a city officer when the EDLC advised that the officer could only make a solicitation by written communication. Chair Gall believed that the EC should clarify whether an "email qualifies as a written communication." The EDLC favored qualifying email as a written communication, and Chair Gall agreed. The EDLC will include it in a stipulation. Chair Gall stated that there may be a bigger issue regarding communication, but the EC could always inquire if the requester "would like to communicate in email, or in writing," if there are privacy concerns.

## VI. ADJOURNMENT

**Commissioner Burroughs moved to adjourn the meeting and Commissioner Silva seconded. All were in favor.**